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Subject: Microsoft Settlement

Public Comment on Proposed Final Judgment for United States v. Microsoft Corp., Civil No. 98-1232

I. Table of Contents

I. TABLE OF CONTENTS

II. PERCEIVED PROBLEMS IN THE PROPOSED FINAL JUDGMENT

A. DOES NOT ?RESTORE COMPETITIVE THREAT? IN THE OS MARKET

B. NO SPECIFICATION OF FAIR & REASONABLE PUNISHMENT

C. HIGHLY DEPENDANT ON DEFINITION

D. SUSCEPTIBLE TO SUBVERSION BY MICROSOFT ?INNOVATION?

E. NEEDED INFORMATION FOR MIDDLEWARE DEVELOPMENT NOT GUARANTEED

F. MSDN FOR DOCUMENTATION DISTRIBUTION

G. PLAINTIFF'S DESIRE FOR TIMELY RESOLUTION

III. POSSIBLE ADDITIONS TO THE PROPOSED FINAL JUDGMENT

A. SYSTEM FOR WINDOWS APPLICATION INTEROPERABILITY IN NON-WINDOWS OSES

B. QUALITY STANDARD FOR APIS BUNDLED WITH WINDOWS OS

C. FAIR & REASONABLE PUNISHMENT (FINES, ETC.)

IV. GENERAL COMMENTS

A. COURT OF APPEALS DECISION & QUALITY STANDARDS FOR SUBSTITUTES OF TIED GOODS

B. DOJ PLAINTIFF NOT BEING AGGRESSIVE

II. Perceived Problems in the Proposed Final Judgment

A. Does not ?restore competitive threat? in the OS market

The Competitive Impact Statement claims to restore the competitive threat that middleware products posed to Microsoft. Nowhere does it try to restore the competitive threat of an OS competitor.

B. No specification of fair & reasonable punishment

The Proposed Final Judgment does not call for any fines, imprisonment, or recovery of court costs. At the minimum, court costs should be recovered.

C. Highly dependant on definition

Microsoft has demonstrated an ability to position itself so to take advantage of loopholes in terminology of contracts.

D. Susceptible to subversion by Microsoft ?innovation?

The evolution of the consent decree case (1995?) into the contempt case (1998) and finally into the Appeals Court ruling on Tying demonstrates that Microsoft can use ?innovation? to ?re-shuffle the deck? on previously defined arraignments.

E. MSDN for documentation distribution

Is MSDN a zero cost source available to the public at large? Linux

developers would express a need to maintain cost free access.

III. Possible Additions to the Proposed Final Judgment

A. System for Windows Application Interoperability in Non-Windows OSes

This addition is similar to the WINE project for Linux.

The court should order Microsoft to develop for commercial use a system that would:

Allow ISVs to compile unmodified source code of a Windows API program for a different OS using native OS APIs while maintaining the look & feel of that OS.

Allow end users to execute (run) ?shrink-wrapped? Windows API programs on a different OS while maintaining, if possible, the look & feel of that OS.

Include all API sub-sets [Direct-X, MFC (Microsoft Foundation Classes), etc.] necessary to compile or execute commercially available products.

Allow an ISV to use standard Microsoft development tools or the development tools of the native OS. [Microsoft would need to create both.]

Be supported and maintained by Microsoft for compatibility with new versions of Windows for a 5 year period. [An escape clause based on market share is needed.]

The OSes to be supported by this system would be Mac OS (an injured party referenced in the case), Linux (an OS for Intel PCs), Solaris X86 (another OS for Intel PCs), and the top 2 other OSes determined yearly. The source code for this system and the system itself is the property of the OS owner, Apple Computer for Mac OS, Linus Torvalds for Linux, Sun Microsystems for Solaris, etc. In addition, the OS owners determine the minimum performance level the system must demonstrate.

The cost to develop and maintain this system would count against any fines the court may order.

The justification of this addition is clearly to lessen the ?Applications Barrier to Entry? in the OS market and hopefully prevent abuse of Microsoft?s monopoly.

B. Quality Standard for APIs bundled with Windows OS

This addition would order Microsoft to release documentation for all APIs (exceptions below) that are used by Windows or any Microsoft Middleware or Applications bundled with Windows, four weeks before product availability (includes changed and new APIs). This would be the basis of a Quality Standard that competitors could use to make substitute products.

The Quality Standard must be available to the public at no cost.

The API exception is the same security exception as noted in Proposed Final Judgment, but excepted APIs must not prevent a competitor from making a substitute product.

The justification of this addition is clearly to lessen the ?Barrier to Entry? in the OS & Middleware markets and hopefully prevent abuse of

Microsoft's monopoly.

C. Fair & reasonable punishment (fines, etc.)

The Sherman Act calls for fines, imprisonment, or both. Also, the Clayton Act allows the government to recover the cost of suit.

As added justification, the court should consider Microsoft's failure to supply "Pro-Competitive Justification" for its actions and Microsoft's previous convictions.

IV. General Comments

A. Court of Appeals Decision & Quality Standards for Substitutes of Tied Goods

The modern definition of Quality is compliance with requirements.

On page 79 of the PDF file of the Court of Appeals decision, the court states as part of its decision on Tying, "It is unclear how the benefits from IE APIs could be achieved by quality standards for different browser manufacturers."

The free software community is full of substitutes for other commercial products. Here is an example to add some clarity: There exists a commercial graphics manager (manages the windows on a UNIX X-Window server) called "Motif" and a free equivalent (minor differences and some bugs) called "Lesstif". An application compiled with Motif can be executed on a system with only Lesstif installed, a clear example of a substitute.

In addition, an API is a Quality Standard (at least a partial one).

American National Standards Institute has many standards that specify APIs and computer programming languages. Example: ANSI/ISO/IEC 9899-1999 specifies the C Programming Language that includes functions (APIs).

B. Plaintiff's desire for timely resolution possibly interfering with desire for justice

Plaintiff's desire for timely resolution has prevented possible determination of further defendant liability, the "tying" portion of the case being dropped, etc. This added to the difficulty of securing a more server remedy because of less liability.